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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/816,036	03/31/2004	John A. Salentine	367-27-002	9301
23935 7590 11/21/2008 KOPPEL, PATRICK & HEYBL 555 ST. CHARLES DRIVE SUITE 107 THOUSAND OAKS, CA 91360				
EXAMINER LARSON, JUSTIN MATTHEW				
ART UNIT 3782		PAPER NUMBER		
MAIL DATE 11/21/2008		DELIVERY MODE PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/816,036

Applicant(s)

SALENTINE ET AL.

Examiner

Justin M. Larson

Art Unit

3782

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 July 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3,4,6-11,13,14 and 16-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3,4,6-11,13,14 and 16-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 3, 4, 7-11, 13, 14, 17, and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Thompson et al. (US 5,524,749 A).

Regarding claims 1 and 11, Thompson et al. disclose a tethering system comprising a tether housing (12b) having an internal tether (16) that is extendable, an internal spring (col. 3 line 25) for biasing the tether into a retracted position, a mounting apparatus (20) integral to said tether housing for mounting said housing on a person, and a holstering system (12a) integral to said tether housing, said tether being extendable, wherein said holstering system comprises a substantially U-shaped elevated slot (pocket formed in portion 12a has the shape and configuration of an elevated U-shaped slot). The initial statement of intended use and all other functional implications have been carefully considered but are deemed not to impose any patentably distinguishing structure over that disclosed by Thompson et al. which is capable of being used in the intended manner, i.e., allowing an electronic personal device having a pivoting ball mount mechanism to be removably mounted within the elevated slot where the tether is attached to the personal device to allow use of the personal device while also preventing the device from falling to the ground when the

tether housing is mounted. There is no structure in Thompson et al. that would prohibit such functional intended use (see MPEP 2111). An electronic device having a pivoting ball could certainly be attached to the tether in place of cards (24-27) and the pivoting ball mount mechanism could be held in some manner in the elevated slot/pocket.

The device of Thompson et al. includes a lanyard loop to the degree claimed. The tether itself can be considered a lanyard where a portion of the lanyard, i.e. a lanyard loop (see esp. Figures 1A-1C), extends between said tether housing and said personal device, effectively satisfying the limitations of the claim. Examiner notes that when configured as shown in Figures 1A-1C, the button (22) could be pressed to lock the tether/lanyard in place making it such that the personal device was mounted to the housing without there being tension on the lanyard loop, i.e. the portion of the lanyard locked outside of the tether housing via button 22. This lanyard loop appears to have no such tension in Figures 1A-1C of Thompson et al. as the lanyard loop is clearly curved in shape and is not taught against the housing. There is no claimed structure of the lanyard loop that defines over such an interpretation.

Regarding claims 3 and 13, the device of Thomson et al. includes a lanyard attachment (30) that prevents said tether from fully retracting into said tether housing.

Regarding claims 4 and 14, the initial statement of intended use and all other functional implications have been carefully considered but are deemed not to impose any patentably distinguishing structure over that disclosed by Thompson et al. which is capable of being used in the intended manner, i.e., the vertically elevated slot (pocket)

receiving a pivoting ball mount mechanism. There is no structure in Thompson et al. that would prohibit such functional intended use (see MPEP 2111).

Regarding claims 7 and 17, the device of Thompson et al. includes a ratchet lock (22) to hold said tether at a desired extended length. Examiner notes that no structure of Applicant's ratchet lock is set forth in the claims that would define over the lock of Thompson et al. Both serve to hold a tether at a desired length.

Regarding claims 8 and 9, the tether of Thompson et al. can be considered to extend through either a top or front surface of the housing, depending on how the housing is viewed.

Regarding claims 10 and 18, Thompson et al. teach that the mounting device may include a mounting clip (20a, Figure 4A).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1, 4, 6-11, 14, and 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tien (US 5,620,120 A) in view of Wong (US 6,546,103 B1), and further in view of Thompson et al.

Regarding claims 1 and 4, Tien discloses a system comprising a mounting apparatus (20/21) and a holstering system (11) arranged to allow an electronic personal device to be mounted thereto, wherein said holstering system comprises a substantially

U-shaped elevated slot (100). Tien fails to disclose a tether housing coupled between the mounting apparatus and the holstering system, wherein the tether housing includes an extendable/retractable tether attachable to said electronic personal device, and wherein the system includes a lanyard loop.

Regarding the tether housing, Wong teaches that it is desirable to provide a tether housing (10) with a tether (12) between a mounting apparatus (40/41) and a holstering system (30) so that a portable electronic device will not accidentally fall to the ground and be damaged or get lost. It would have been obvious to one having ordinary skill in the art at the time the invention was made to implement a tether housing and tether between the mounting apparatus (20/21) and holstering system (11) of Tien, as taught by Wong, so that the personal electronic device of Tien would not fall to the ground and become damaged or lost.

Regarding the lanyard loop, Thompson et al. teach that a tether housing may include a lock button (22) so as to lock the tether in a desired position. It would have been obvious to one having ordinary skill in the art at the time the invention was made to include a lock button on the tether housing of the modified Tien system so that a user could lock the tether in a desired position, as taught by Thompson et al. With such a lock button, the modified Tien system would inherently include a lanyard loop when the tether/lanyard was locked in a position such that it was not fully retracted into the tether housing (as Thompson et al. show their lanyard in Figures 1A-1C). When locked in such a position, there would be no tension between the tether housing and an object attached to an end of the tether.

The initial statement of intended use and all other functional implications have been carefully considered but are deemed not to impose any patentably distinguishing structure over the modified Tien device which is capable of being used in the intended manner, i.e., the elevated slot receiving a pivoting ball of a personal device. There is no structure in the modified Tien device that would prohibit such functional intended use (see MPEP 2111).

Regarding claim 6, a leg (13) of the U-shaped elevated slot of the modified Tien device comprises a hinge (18/140) that acts in securing a personal device in the slot.

Regarding claim 7, the modified Tien system includes a ratchet lock (22, Thompson et al.) to the degree claimed.

Regarding claims 8 and 9, the tether of the modified Tien device can be considered to extend through either a top or front surface of the housing, depending on how the housing is viewed.

Regarding claim 10, the modified Tien device includes a mounting clip (21).

Regarding claims 11, 14, and 16-18, the modified Tien system includes the claimed features except for a spring internal to said tether housing. Wong, whose tether housing was added to Tien, mentions a spool but is silent as to the existence of a spring. Thompson et al., however, teach that such a tether housing (12b) can include an internal spring (col. 3 line 25) for biasing the tether into a retracted position. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have included an internal spring in the tether housing of the modified Tien system in order to bias the tether into a retracted position, as taught by Thompson et al.

Response to Arguments

5. Applicant's arguments filed 7/14/08 with respect to Thompson et al. have been fully considered but they are not persuasive.

Applicant has asserted that Thompson et al. fail to disclose a substantially U-shaped elevated slot shaped to receive a pivoting ball mount mechanism, arguing that the pouch 12a of Thompson et al. cannot be considered such a slot. Examiner disagrees, as the pouch 12a of Thompson et al. clearly forms a slot (pocket interior) that is substantially U-shaped (Thompson Figure 2) and elevated (away from the tether housing). This pocket or slot is shaped to, i.e. capable of receiving, some pivoting ball mounting mechanism. Examiner notes that no specific pivoting ball mounting mechanism is being claimed, let alone any particular shape that would be incapable of insertion into the Thompson et al. slot.

Applicant has asserted that Thompson et al. fail to disclose a lanyard loop. As correctly noted by Applicant, Thompson et al. teach a button that may be activated so that the tether may be retained in an extended position. When retained in such an extended position, i.e. not being biased back into the tether housing, the extended tether/lanyard forms a lanyard loop or section of tether/lanyard between the housing and an object on the end of the tether where there is no tension in the lanyard loop. There is no claimed structure of the lanyard loop that defines over such an interpretation.

6. Applicant's arguments with respect to Tien v. Wong have been considered but are moot in view of the new ground(s) of rejection involving Tien v. Wong v. Thompson et al.

Conclusion

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Justin M. Larson whose telephone number is (571) 272-8649. The examiner can normally be reached on Monday - Thursday, 6am-10am, 12pm-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan J. Newhouse can be reached on (571) 272-4544. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/J. M. L./
Examiner, Art Unit 3782
11/13/08

/Nathan J. Newhouse/
Supervisory Patent Examiner, Art Unit 3782